# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SECOND APPEAL No. 203 of 2005**
**with**
**CIVIL APPLICATION No. 8755 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.L.DAVE**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SAROJBEN AMARSINH PARMAR & 2 - Appellant(s)**

**Versus**

**PUSHPABEN PRADUMAN TRIVEDI & 5 - Defendant(s)**

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**Appearance :**
MR KASHYAP R JOSHI for Appellant(s) : 1 - 3.
MR JAL UNWALLA FOR MR JB PARDIWALA for Defendant(s) : 1 - 6.
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**CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**

**Date : 13/01/2006**

**ORAL JUDGMENT**

1. By this Second Appeal the appellants challenge the judgment and decree passed by District Court,

Bharuch, on 4th August, 2005 in Regular Civil Appeal No.60 of 2005. The said appeal arose out of an order in Objection Application in Regular Execution Application No.29 of 2004 in Regular Civil Suit No.316 of 1996.

2. The appellants claim to be strangers to the original suit and the appeal. The suit was for declaration and eviction of the suit property, which was preferred against one Anandsinh Amarsinh Parmar. The said judgment-debtor happens to be son of appellant No.1 and brother of appellants No.2 and 3. The suit was decreed. The appeal preferred by the defendant-Anandsinh was dismissed. He preferred second appeal before the High Court, which also was dismissed. The judgment-debtor preferred Special Leave Petition before the Apex Court, which also came to be dismissed. Thereafter, the execution application in question was preferred by the respondent herein. In that execution application, the appellants filed their objection application under Order XXI, Rule 97 of the Code of Civil Procedure. That application having been turned down, they preferred Regular Civil Appeal No.60 of 2005 in the District Court and that appeal having been dismissed, present Second Appeal is preferred.

3. Learned Advocate, Mr. Kashyap R. Joshi, submitted that both the Courts below have dismissed the objections without affording any opportunity to the appellants to lead evidence. He submitted that such objection application is to be decided as if it is a suit and the appellants had expressed their desire in the objection itself to lead evidence. Both the Courts have denied this right to the appellants and, therefore, this appeal.

3.1 Mr. Joshi submitted that the objectionists/ appellants are assertain their right by adverse possession for which leading of evidence is essential. The Courts below have not considered this aspect and, therefore, this appeal may be entertained.

4. On the other hand, learned Advocate, Mr. Unwalla, resisted this appeal on the ground that the appellants/objectionists are in no way stranger to the litigation. When the suit was filed against Anandsinh Amarsinh Parmar, he had raised a plea that present appellants were necessary parties to the suit. The appellants are close relatives of Anandsinh and staying

in the suit property itself. Still they did not chose to approach the Court and join the litigation in the earlier round. They sat tight lipped till the execution application is filed and then, when the warrant is sought to be served, they raised the objection. Mr. Unwalla, therefore, submitted that the attempt on the part of the appellants is only to cause obstruction in the enjoyment of a decree passed in favour of the respondents and confirmed by all competent courts upto the Supreme Court and, therefore, this appeal may not be entertained. Mr. Unwalla submitted that both the Courts below have taken into consideration this very aspect and they came to a conclusion that the objection raised by the objectionists/appellants is not honest or bona fide.

4.1 Mr. Unwalla submitted that the plea of adverse possession has already been decided in the earlier round of litigation. He, therefore, submitted that this appeal may not be entertained.

5. Having regard to rival side contentions, at the outset, it may be noted that both the Courts below have turned down the plea of the appellants keeping in light the relevant factual aspects. The Courts below were

justified in observing that the question of adverse possession has already been decided in the earlier litigation. The claim of the appellants that they are third parties to the previous litigation also has rightly been turned down considering the relationship between the appellants and the judgment-debtor and the fact that they were all staying together. When the judgment-debtor raised an objection in the previous litigation regarding non-joinder of parties, nothing prevented either him or the appellants from moving the Court for permitting them to join the litigation and, now, an attempt is made to capitalize out of this technical situation created by themselves and thereby, virtually, set at naught the outcome of previous litigation fought right upto the Apex Court. In the opinion of this Court, there appears no substance in the appeal.

6. It is true that for raising such objection, a separate suit is not required to be filed and relevant issues are required to be decided on merits. But it may not always be necessary to adduce evidence for considering the cases of parties. They rest mainly on legal aspects on undisputable facts. In light of what is observed hereinabove, the answer to the question framed

while admitting the appeal will be in the affirmative, in the facts of the case. This appeal, therefore, must fail and stands dismissed.

7. In view of the dismissal of the appeal, Civil Application No.8755 of 2005 does not survive. It shall stand disposed of accordingly. Notice is discharged with no order as to costs. Ad-interim relief is vacated.

**[ A. L. DAVE, J. ]**

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